

Letter of Findings Number: 04-20110376
Use Tax
For Tax Years 2008-2009

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ISSUE

I. Use Tax–Public Transportation Exemption.

Authority: Carnahan Grain, Inc. v. Indiana Dep't of State Revenue, 828 N.E.2d 465, 468 (Ind. Tax Ct. 2005); IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-5-27; IC § 6-8.1-5-1; [45 IAC 2.2-3-4](#); [45 IAC 2.2-5-61](#).

Taxpayer protests the imposition of use tax on purchases it believes qualify for the public transportation exemption.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had not collected some sales tax as required of a retail merchant and had not paid sales tax on some purchases for its own use in its business operations in the tax years 2008 and 2009. The Department therefore issued proposed assessments for sales tax, use tax, and interest for those years. Taxpayer protested a portion of the use tax assessments. An administrative hearing was held and time was allowed for the submission of documentation supporting Taxpayer's protest. After the agreed-upon time had expired, Taxpayer's representative requested and was granted additional time for the submission of additional documentation. After that deadline expired, the Hearing Officer called Taxpayer's representative to ask if any documentation would be submitted. The representative was unavailable and the Hearing Officer left a message stating that the documentation was due. A few days later, Taxpayer's representative called back after office hours stating that he would call the following Monday to discuss the matter. After another week without receiving any contact from the representative, the Hearing Officer wrote this Letter of Findings based on the information contained in the file. Further facts will be supplied as required.

I. Use Tax–Public Transportation Exemption.

DISCUSSION

Taxpayer protests a portion of the use tax assessments based on its position that it qualifies for the public transportation exemption on some of its trucks. At hearing, Taxpayer explained why it believed that certain trucks qualified for the exemption. The Hearing Officer requested that the explanation be provided in written form along with supporting documentation. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

The use tax is imposed under IC § 6-2.5-3-2(a), which states:

- (a) An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Also, [45 IAC 2.2-3-4](#) provides:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when tangible personal property is acquired in a retail transaction and is stored, used, or consumed in Indiana, Indiana use tax is due if sales tax has not been paid at the point of purchase. In this case, the Department determined that Taxpayer had acquired tangible personal property in retail transactions and used that property in Indiana without paying sales tax at the point of purchase. The Department therefore issued proposed assessments for use tax, as provided by [45 IAC 2.2-3-4](#).

The public transportation exemption is found at IC § 6-2.5-5-27, which states:

Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

The exemption is further explained by [45 IAC 2.2-5-61](#), which states in part:

- (a) The state gross retail tax shall not apply to the sale and storage or use in this state of tangible personal

property which is directly used in the rendering of public transportation of persons or property.

(b) Definition: Public Transportation. Public transportation shall mean and include the movement, transportation, or carrying of persons and/or property for consideration by a common carrier, contract carrier, household goods carrier, carriers of exempt commodities, and other specialized carriers performing public transportation service for compensation by highway, rail, air, or water, which carriers operate under authority issued by, or are specifically exempt by statute or regulation from economic regulation of, the public service commission of Indiana, the Interstate Commerce Commission, the aeronautics commission of Indiana, the U.S. Civil Aeronautics Board, the U.S. Department of Transportation, or the Federal Maritime Commissioner; however, the fact that a company possesses a permit or authority issued by the P.S.C.I., I.C.C., etc., does not of itself mean that such a company is engaged in public transportation unless it is in fact engaged in the transportation of persons or property for consideration as defined above.

(c) In order to qualify for exemption, the tangible personal property must be reasonably necessary to the rendering of public transportation. The tangible personal property must be indispensable and essential in directly transporting persons or property.

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(Emphasis added).

Also, the Indiana Tax Court has addressed the application of the public transportation exemption. In *Carnahan Grain, Inc. v. Indiana Dep't of State Revenue*, 828 N.E.2d 465, 468 (Ind. Tax Ct. 2005), the court provided:

[I]f the property is not predominately used for third-party transportation (i.e., it is predominantly used to transport the taxpayer's own property), then the taxpayer is not entitled to the exemption.

(Emphasis in original).

Therefore, the property in question must be used predominantly for transporting the property of another for consideration in order to qualify for the public transportation exemption.

In the instant case, Taxpayer has not provided any documentation in support of its position that it qualifies for the exemption provided under IC § 6-2.5-5-27. Neither has Taxpayer provided a detailed written explanation of its position. Taxpayer has not met its burden of proving the proposed assessments wrong, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

Posted: 02/29/2012 by Legislative Services Agency

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